

**UNITED STATES BANKRUPTCY COURT  
WESTERN DISTRICT OF VIRGINIA  
LYNCHBURG DIVISION**

In re: JACQUELINE JENETT	)	Case No. 04-64570
CARRINGTON,	)	
	)	
Debtor,	)	
	)	Adv. No. 05-06033
W. CLARKSON McDOW, JR., United	)	
States trustee	)	
	)	
Plaintiff,	)	
	)	
v.	)	
	)	
JACQUELINE JENETT CARRINGTON,	)	
	)	
Defendant.	)	
	)	

**MEMORANDUM**

This matter came before the court on a request by the plaintiff, the United States trustee, for entry of default. The request will be denied without prejudice for the following reasons.

First, the affidavit accompanying the request is not signed by counsel. This court requires that pleadings, even those such as certificates of service and affidavits in support of entry of default be signed by the pleading party or counsel for the pleading party.

Second, if the court were to accept the affidavit as properly executed, the summons expired before it was served. A summons must be served within ten (10) days after it is issued. See Fed. R. Bankr. P. 7004(e). According to the affidavit, the summons issued "on or about" April 26, 2005, and was served along with the complaint on May 21, 2005. Accordingly, the summons was serve

about 25 days after it was issued.

Third, the affidavit does not affirm that the summons and complaint were served on the defendant on a date certain. Rather, the affidavit states that the record indicates that the summons and complaint were served on the defendant. The two statements are not the same. One affirms that the summons and complaint were actually served on a date certain, while the other only affirms that the docket indicates that such is the case.

Fourth, while the affidavit does affirm that the date by which the defendant was required to answer or otherwise respond to the complaint has passed, the affidavit does not affirm what that date was.

Finally, the affidavit does not affirm that service was made on a date certain, rather it affirms that service was made "on or about" a date certain. Because a summons must be served within 10 days of issuance, the affidavit must include the date on which service was actually effected so that the Clerk may calculate if the summons is timely served.

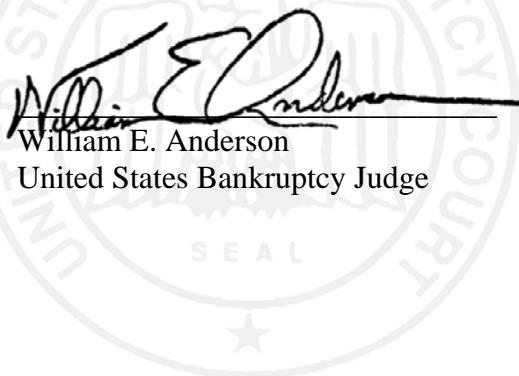
## **ORDER**

For the foregoing reasons, the request for entry of default is denied without prejudice.

So ORDERED.

Upon entry of this memorandum and order, the Clerk shall forward to copy to the United States Trustee.

Entered on this 20<sup>TH</sup> day of October, 2005.



William E. Anderson  
United States Bankruptcy Judge